

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AUTOHOP LITIGATION

This Document Relates To:

DISH Network L.L.C., 12 Civ. 4155
(LTS)(KNF)

12 Civ. 4155 (LTS) (KNF)

**DECLARATION OF ELYSE D.
ECHTMAN**

**REDACTED PUBLIC FILING,
ORIGINAL FILED UNDER SEAL**

I, Elyse D. Echtman, declare:

1. I am a member of the bar of the State of New York, admitted to practice before this Court, and am a partner with the law firm of Orrick, Herrington & Sutcliffe LLP, attorneys of record for Plaintiff/Counterclaim Defendant DISH Network L.L.C. and Counterclaim Defendants DISH Network Corporation and EchoStar Technologies L.L.C. (collectively, “DISH”). I am familiar with the events, pleadings, and discovery in this action. I can testify about the facts stated competently if called upon to do so.

2. On May 24, 2012, DISH Network L.L.C. commenced this action against American Broadcasting Companies, Inc. (“ABC”), and the other three major broadcast television networks, CBS, NBC and Fox, seeking a declaration that the features of the Hopper Whole Home DVR (“Hopper”) do not violate the Copyright Act or breach any of the retransmission agreements between it and the networks. Later that same day, CBS, NBC, and Fox filed separate actions against DISH in the Central District of California concerning the Hopper’s PrimeTime Anytime (“PTAT”) and AutoHop features. *See NBC Studios, LLC, et al. v. DISH Network Corp., et al.*, No. CV 12-04536 (DMG) (SHx) (C.D. Cal.); *CBS Broadcasting Inc., et al. v. DISH Network Corp.*, No. CV 12-04551(DMG) (SHX) (C.D. Cal.); *Fox Broadcasting Co. v. DISH Network L.L.C.*, No. CV 12-04529 (DMG)(SHx) (C.D. Cal.).

3. ABC was the only one of the four major television networks that did not file its own action against DISH. DISH served ABC with its summons and complaint in this case on May 25, 2012. On June 22, 2012, after having obtained a one-week extension of time to respond to the Complaint, ABC filed its answer and, along with ABC, Inc. and Disney Enterprises, Inc.

(collectively, "ABC"), asserted counterclaims against DISH Network L.L.C. and DISH Network Corporation for breach of contract and copyright infringement. A true and correct copy of the Stipulation and Order granting ABC an extension of time is attached hereto as Exhibit 1. ABC amended its Answer and Counterclaims on October 9, 2012, adding EchoStar Technologies L.L.C. as a counterclaim defendant.

4. On August 22, 2012, Fox moved for a preliminary injunction against DISH in the Central District of California seeking to compel DISH to disable the PTAT and AutoHop features on the Hopper DVR. That motion was denied by United States District Judge Dolly M. Gee by "Order Re Plaintiffs' Motion for Preliminary Injunction" dated November 7, 2012. A true and correct copy of Judge Gee's Order on Fox's motion is attached hereto as Exhibit 2. Fox noticed an appeal from Judge Gee's Order to United States Court of Appeals for the Ninth Circuit on November 9, 2012. However, Fox has not sought emergency relief by motion to the Court of Appeals pursuant to 9th Cir. R. 27-3.

5. To date, neither CBS nor NBC has moved for injunctive relief in connection with its claims against DISH.

6. The parties to this action submitted an Initial Conference Report on August 1, 2012 containing a proposed case management schedule. A true and correct copy of the Initial Conference Report is attached hereto as Exhibit 3. At the pre-trial conference held on August 3, 2012, the Court entered a Scheduling Order which, in pertinent part, adopted DISH's proposal that ABC be required to file any motion for a preliminary injunction within 30 days after the close of the phased expedited discovery period. That deadline originally fell on November 1, 2012. Nothing in the Scheduling Order precluded ABC from moving for a preliminary injunction prior to that deadline. A true and correct copy of the Scheduling Order is attached hereto as Exhibit 4.

7. On October 5, 2012, the parties submitted a joint letter application to the Court to extend the phased expedited discovery period and, accordingly, the deadline by which ABC was required to file any motion for a preliminary injunction. The Court endorsed the letter, extending

the outside deadline for ABC's preliminary injunction motion to November 23, 2012. A true and correct copy of the endorsed letter is attached hereto as Exhibit 5.

8. ABC served DISH with its motion for a preliminary injunction on the November 23, 2012 deadline.

9. Attached hereto as Exhibit 6 is a true and correct copy of the transcript of the Deposition of Justin Connolly dated October 19, 2012.

10. Attached hereto as Exhibit 7 is a true and correct copy of the transcript of the Deposition of Mark Loughney dated October 19, 2012.

11. Attached hereto as Exhibit 8 is a true and correct copy of certain documents produced by Fox in the related matter, *Fox Broadcasting Co. v. DISH Network L.L.C.*, No. CV 12-04529 (DMG)(SHx) (C.D. Cal.), bearing bates numbers FOX000235-236.

12. Attached hereto as Exhibit 9 is a true and correct copy of the Brief for Respondents in *Sony Corp. of America v. Universal Studios, Inc.*, 464 U.S. 417 (1984). This version of the brief, obtained from the website of the Electronic Frontier Foundation and available at http://w2.eff.org/legal/cases/betamax/betamax_respon_brief.pdf, reproduces the notes to the text but not official page numbers.

13. Attached hereto as Exhibit 10 is a true and correct copy of certain documents ABC has produced in discovery bearing bates numbers ABC0000172-187.


14. Attached hereto as Exhibit 11 is a true and correct copy of certain documents ABC has produced in discovery bearing bates numbers ABC00002252-2278.

15. Attached hereto as Exhibit 12 is a true and correct copy of certain documents ABC has produced in discovery bearing bates numbers ABC00003681-3773.

16. Attached hereto as Exhibit 13 is a true and correct copy of the Declaration of Ian Saffer in Support of Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction submitted in *Fox Broadcasting Co. v. DISH Network L.L.C.*, No. CV 12-04529 (DMG)(SHx) (C.D. Cal.).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of December, 2012, at New York, New York



Elyse D. Echtman